IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
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ORDER

Dr. O.P. Bhatt
vs
State of Rajasthan & Ors.

S.B. CIVL WRIT PETIITON NO.4782/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 30th August, 2006

PRESENT
HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.B.S. Charan
Mr.R.K. Charan
Mr.Rajendra Charan, Advocates, for the petitioner.
Mr.Rameshwar Dave, Dy. Government Advocate for the respondents.

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BY THE COURT: -

Challenge in this writ petition has been made to the order dated 3rd June, 2000 whereby the petitioner was awarded the penalty of censure and the order dated 19.10.2001 whereby his review petition there against has been dismissed.

When the petitioner was working on the post of Vikas Adhikari, Panchayat Samiti, Suwana, a charge-sheet was served

upon him on 14.11.1994 under Rule 16 of the Rajasthan Civil Services (C.C.A.) Rules, 1958 (in short the C.C.A. Rules). First charge against him was with regard to abuse of his office thereby securing Patta of a plot in the Abadi land of Gram Panchayat, Pansal in the name of his wife Smt. Vijay Laxmi and second charge was to the effect that he sanctioned payment of a sum of Rs.19200/- to one Shri Balu S/o Shri Kanjore, resident of Kodu Kota in spite of the fact that he did not dug a well from the sanctioned amount of loan.

The petitioner appeared before the respondent no.1 (disciplinary authority) on 20.12.1994 and submitted a written application for inspection of the relevant record and taking extracts thereof. When his request was not allowed, he served a notice for demand of justice on 26.9.1999. It was thereupon that he was allowed to inspect certain records on 28.5.1999. He was however not permitted to take extract thereof. According to the petitioner, in these circumstances, he was constrained to file reply with whatever material was available with him. The disciplinary authority on consideration of the reply of the petitioner by its order dated 29.3.2000 converted inquiry under Rule 16 of the C.C.A. Rules into one under Rule 17 of C.C.A. Rules. The petitioner thereafter filed supplementary reply on 24.4.2000 with the request that the inquiry proceedings may be

dropped and he may be exonerated from all the charges. While the disciplinary authority by the impugned order dated 3.6.2000 exonerated the petitioner from charge no.1 but imposed penalty of censure upon the petitioner on charge no.2 being proved against him. The petitioner preferred review petition against this, which also was rejected vide order dated 19.10.2001.

I have heard Shri B.S. Charan, learned counsel for the petitioner and Shri Rameshwar Dave, learned Dy. Government Advocate appearing for the respondents and perused the record.

Shri. B.S. Charan, learned counsel for the petitioner has argued that relevant records were not made available to the petitioner for inspection nor was he allowed to take extract of such record. The procedure contained in Rule 17 of the C.C.A. Rules has not been correctly followed. According to him the amount was sanctioned to Shri Balu by the petitioner's predecessor Vikas Adhikdari who had released payment of two installments in favour of Shri Balu respectively on 8.4.1991 and 14.8.1991 and the petitioner merely recommended the payment of third installment on the basis of verification made by the Sarpanch and Junior Engineer. Both of them certified that they have physically verified the work actually done and the Junior Engineer has also recorded entry in his measurement book.

Learned counsel for the petitioner has referred to clause 15.5 of the Gramine Karya Nirdeshika issued by the Special Scheme & I.R.D.P Department, Government of Rajasthan, Jaipur. According to said clause 15.5, verification for the purpose of first, second and third installments shall be made by the concerned Junior Engineer, Sarpanch, Group Secretary, Vikas Adhikari or any other person nominated by him but the payment of fourth and the last installment shall be made only after the assessment of the complete work has been done by the Junior Engineer. Learned counsel for the petitioner argued that petitioner could not be held responsible for the lapses on the part of the Junior Engineer and the Sarpanch. It has been argued that petitioner has been prejudiced in the inquiry because the relevant record has not been made available to him either for the purpose of inspection or taking extract thereof.

On the other hand, Shri Rameshwar Dave, learned Dy. Government Advocate argued that disciplinary authority on being satisfied with the reply of the petitioner to the charge-sheet has already taken a lenient view by converting the inquiry under Rule 16 of the C.C.A. Rules into an inquiry under Rule 17 of the C.C.A. Rules. It has been argued that even according to clause 15.5, referred to supra, verification of the work in question was required to be made either by Vikas Adhikdari himself or any of

his nominee. The petitioner cannot escape his responsibility on the ground that payment of earlier two installments were made by his predecessor. It has been argued that the petitioner has not pleaded in the memorandum of writ petition with regard to discrimination for not taking any action against the other officials including his predecessor Vikas Adhikari and, therefore, no definite reply on this aspect could be given. Even otherwise, such an argument is not available to the petitioner because the charge against him has been proved on the basis of his own conduct. On the question of inspection of record and taking extract thereof, it has been argued that petitioner himself inspected the complete record on 20.12.1994 and on his further demand for inspection of additional documents, he was again allowed to inspect the same on 28.5.1999. It was thereafter that the petitioner finally submitted his reply on 7.6.1999. In view of this, the petitioner cannot be allowed to contend that he was denied reasonable opportunity to defend himself.

I have given my thoughtful consideration to the rival submissions made by learned counsel for the parties and perused the record.

The disciplinary authority on receipt of the reply to the charge-sheet submitted by the petitioner decided to convert the

inquiry under Rule 16 of the C.C.A Rules one into under Rule 17 of the C.C.A. Rules. The petitioner on his request was allowed to inspect the relevant record on 20.12.1994, which was prior to filing of the reply to charge-sheet under Rule 16 of the C.C.A. Rules and, thereafter, again the petitioner was wanted to make inspection of certain documents which was also allowed to him on 28.5.1999. After the second inspection, the petitioner submitted reply to the charge-sheet on 7.6.1999. It cannot therefore be said that the petitioner was not provided reasonable opportunity to defend himself. Moreover, the summary procedure of inquiry has been prescribed under Rule 17 of the C.C.A. Rules whereas for major penalty inquiry detailed procedure has been prescribed under Rule 16 of the C.C.A. Rules. In the first place, the petitioner nowhere in the memorandum of writ petition has raised an argument of discrimination for not taking any action against the Junior Engineer and his predecessor Vikas Adhikari, secondly, however, I have serious doubts whether such argument should be available to the petitioner because correctness of the impugned order shall have to be adjudged on the facts of the present case. Right to equality is a positive concept and cannot be enforced in negative form because two wrongs cannot make one right. On merits also, the clause 15.5 of the said Nirdeshika relied upon by the petitioner himself requires that payment of the first, second

and third installments shall be made only after verification of the work by the Vikas Adhikari or his nominee. In the present case, the petitioner has made payment of third installment only on the basis of alleged verification made by Sarpanch and Junior Enigneer whereas the fact was that the well for which loan was sanctioned in favour of Shri Balu was not at all dug. The order of penalty awarded to the petitioner vide order dated 3.6.2000 in the facts and circumstances of the present case therefore dose not suffer from any illegality and the order rejecting the review petition of the petitioner dated 19.10.2001 also does not suffer from any illegality.

In the result, the writ petition is dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-